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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**DEFENDANT'S RESPONSE TO
THE MOTION TO DETAIN
DEFENDANT POST GUILTY
VERDICT**

Defendant David A. Harbour ("Harbour"), by and through undersigned counsel, submits this Response to the Government's Motion to Detain Defendant Post Guilty Conviction.

18 U.S.C. § 3143(a)(2)(B) permits the release of a Defendant who has been found guilty of Class C felonies when the judicial officer finds clear and convincing evidence that the Defendant is not likely to flee or pose a danger to any other person in the community.

This Court initially ordered the release of Harbour in order to participate in his own defense. While the Defense acknowledges that the release was only for the duration

1 of the first trial, Defendant respectfully requests to remain out of custody for the
2 remainder of trials and through sentencing.

3 He was released from August 2019 to December 2021 and he actually won the
4 hearings to revoke his release.

5
6 First, as a matter of practicality, the same conditions that the Court relied upon in
7 releasing Harbour the first time still exist today as they did in January. Harbour would not
8 be able to participate in his defense in any meaningful way if he is remanded to custody;
9 counsel would have little contact with Harbour due to the U.S. Marshall's transport
10 schedules and Harbour would be given next to no sleep on a daily basis.

11
12 Second, clear and convincing evidence exists that the Defendant is not a flight
13 risk. Harbour, since his release, has abided by all release conditions, actively participated
14 in his defense, and has maintained close contact with the Court's Pretrial Services
15 Officer. Harbour's wife, daughters, sister, mother, and friends reside in the State of
16 Arizona. His daughters are enrolled in school and have relationships that would be
17 difficult to upend if Harbour were to flee.

18
19 The government contends that Harbour would face 17-22 years if sentenced under
20 the guidelines, but that is fantastical. The amount of loss as calculated by the government
21 is \$9.5-\$20 million. Harbour was not convicted on all counts and as the Court is aware,
22 the transactional money laundering counts tie directly to the underlying wire fraud
23 amounts. The potential losses are \$1.1 million for PAIF, \$1 million for Burg, and
24 \$350,000 for Turasky.
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27
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1 PAIF foreclosed OakTree's account when it had \$1.9 million in it, so PAIF
2 wound-up \$800,000 ahead of where it should have been. Turasky converted his loss into
3 a future gain in a new deal.

4
5 So realistically, Harbour is in the ballpark of roughly \$2.5 million for the amount
6 of loss. The parties can and will argue for adjustments through the presentencing process.
7 At the moment, the Defense calculates the offense level at 22, criminal history category
8 0-1; Harbour does not have a prior criminal history. The government also lists Kenneth
9 Bobrow and Rhonda Gray as vulnerable victims, but they were not counts in the
10 indictment. The co-called Spaulding fraud happened in 2007 and Kenneth Bobrow was,
11 at that time, hardly a vulnerable adult. Rhonda Gray's loan was not related conduct.

12
13 The government failed to prove the existence of a Ponzi scheme. Anything that
14 existed prior to Operation Chokepoint was acquitted by the jury, which is the point of
15 the results of acquittals in the Alison Willson and Carol Hill counts (Counts 11 and 12).

16
17 At this stage, Harbour has no reason to flee. While he was found guilty on most
18 counts, he was also found not guilty on others.

19
20 Harbour's recent conduct, his observance of very strict release conditions coupled
21 with his ties to the community and the initial Guideline calculation, all militate in favor of
22 his continuing on release. With two more trials currently scheduled, the same need for his
23 release as existed for trial still exists. A remand to custody would effectively eliminate his
24 Constitutional right and his ability to participate in those trials.

25
26 Finally, late in the afternoon of March 2, 2023, the government forwarded a
27 proposed plea agreement that, if negotiated to a successful resolution, would cause the
28

1 entry of a plea to Count 24 of the Second Superseding Indictment. The offer expires at
2 5:00 P.M. today and is under serious consideration. If Mr. Harbour is remanded after this
3 morning's hearing, the negotiations cannot be completed.
4

5 RESPECTFULLY SUBMITTED this 3rd day of March 2023.

6 CHRISTIAN DICTER & SLUGA, P.C.
7

8 By: /s/ Stephen M. Dichter

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14

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on March 3, 2023 I electronically transmitted the attached
17 document to the Clerk's Office using the CM/ECF system for filing and for transmittal
18 of Notice of Electronic Filing to the following CM/ECF registrants:
19

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/s/ Yvonne Canez